

APPENDIX C - 3

INTELLECTUAL PROPERTY PROVISIONS

FOR

**LARGE AND SMALL BUSINESS, NONPROFIT
ORGANIZATIONS, EDUCATIONAL INSTITUTIONS,
AND OTHERS
(NON RESEARCH AND DEVELOPMENT)**

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CLAUSES

CLAUSE 1 -- AUTHORIZATION AND CONSENT (JUL 1995)

Derived from FAR 52.227-1

- A. The Government authorizes and consents to all use and manufacture, in performing this subcontract or any subcontract at any tier, of any invention described in and covered by a United States patent
1. Embodied in the structure or composition of any article the delivery of which is accepted by the Government through NREL under this subcontract or;
 2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with--
 - (i) Specifications or written provisions forming a part of this subcontract or
 - (ii) Specific written instructions given by the DOE through NREL directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- B. The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any lower-tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

ALTERNATE I (APR 1984)

Alternate I of this clause is applicable if this award is for the conduct of research, development, or demonstration

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this subcontract or any subcontract at any tier.

ALTERNATE II (APR 1984)

Alternate II of this clause is applicable if this award includes an order or lower-tier subcontract for communication services and facilities

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this subcontract for communication services and facilities for which rates, charges, and tariffs are not established by a government regulatory body, of any invention described in and covered by a United States patent
 - 1. Embodied in the structure or composition of any article the delivery of which is accepted by the Government through NREL under this subcontract or
 - 2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with specifications or written provisions forming a part of this subcontract or with specific written instructions given by the DOE through NREL directing the manner of performance.

CLAUSE 2 -- NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

Derived from FAR 52.227-2

The provisions of this clause shall be applicable only if the amount of this award exceeds \$100,000, and the award is for the conduct of construction, research, development, or demonstration

- A. The Subcontractor shall report to the DOE through NREL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this subcontract of which the Subcontractor has knowledge.
- B. In the event of any claim or suit against the Government or NREL on account of any alleged patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work or services performed under this subcontract, the Subcontractor shall furnish to the Government, when

requested by the DOE through NREL, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.

- C. The Subcontractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer lower-tier subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

CLAUSE 3 -- PATENT INDEMNITY (APR 1984)

Derived from FAR 52.227-3

The provisions of this clause shall not be applicable if this award is for the conduct of research, development, or demonstration

- A. The Subcontractor shall indemnify the Government and NREL and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this subcontract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- B. This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the Government or NREL of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to
 - 1. An infringement resulting from compliance with specific written instructions of the DOE through NREL directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the subcontract not normally used by the Subcontractor,
 - 2. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or
 - 3. A claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a court of competent jurisdiction.

ALTERNATE I (APR 1984)

Alternate I of this clause is not applicable to the items specifically listed and/or identified

The following paragraph (C) is added to the clause:

C. This patent indemnification shall not apply to the following items:

None

[List and/or identify the items to be excluded from this indemnity.]

ALTERNATE II (APR 1984)

Alternate II of this clause is applicable to the items specifically listed and/or identified

The following paragraph (C) is added to the clause:

C. This patent indemnification shall cover the following items:

None

[List and/or identify the items to be included under this indemnity.]

ALTERNATE III (JUL 1995)

Alternate III of this clause is applicable if this award includes a lower-tier subcontract for communication services and facilities

The following paragraph is added to the clause:

- () As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this subcontract and covering those communications services and facilities
1. That are or have been sold or offered for sale by the Subcontractor to the public,
 2. That can be provided over commercially available equipment, or
 3. That involve relatively minor modifications.

CLAUSE 4 -- RIGHTS IN DATA - GENERAL (JUN 1987), AS MODIFIED BY DEAR 927.409 (EFFECTIVE APR 1998)

Derived from FAR 52.227-14

If this award requires the use or delivery of limited rights data and/or restricted computer software, Alternates II and/or III are incorporated , unless modified upon recommendation of Patent Counsel.

A. Definitions.

1. "Computer data bases," as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
2. "Computer software," as used in this clause, means--
 - (i) Computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and
 - (ii) Data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
3. "Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this subcontract, such as financial, administrative, cost and pricing, or management information.
4. "Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
5. "Limited rights data," as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights

to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (G)(2) of this section if included in this clause.

6. "Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (G)(3) of this section if included in this clause.
7. "Technical data," as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
8. "Unlimited rights," as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

B. Allocation of rights.

1. Except as provided in paragraph (C) below regarding copyright, the Government shall have unlimited rights in:
 - (i) Data first produced in the performance of this subcontract;
 - (ii) Form, fit, and function data delivered under this subcontract;
 - (iii) Data delivered under this subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair items, components, or processes delivered or furnished for use under this subcontract; and
 - (iv) All other data delivered under this subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (G) below.

2. The Subcontractor shall have the right to:

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this subcontract, unless provided otherwise in paragraph (D) below;
- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (G) below;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (E) and (F) below; and
- (iv) Establish claim to copyright subsisting in data first produced in the performance of this subcontract to the extent provided in subparagraph (C)(1) below.

C. Copyright.

1. Data first produced in the performance of this subcontract. Unless provided otherwise in subparagraph (D) below, the Subcontractor may establish, without prior approval of the DOE, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this subcontract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the DOE is required to establish claim to copyright subsisting in all other data first produced in the performance of this subcontract. When claim to copyright is made, the Subcontractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including subcontract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

2. Data not first produced in the performance of this subcontract. The Subcontractor shall not, without prior written permission of the DOE, incorporate in data delivered under this subcontract any data not first produced in the performance of this subcontract and which contains the copyright notice of 17 U.S.C. 401 and 402, unless the Subcontractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (G)(3) below if included in this subcontract or as otherwise may be provided in a collateral agreement incorporated in or made part of this subcontract.
3. Removal of copyright notices.

The Government agrees not to remove any copyright notices place on data pursuant to this paragraph (C), and to include such notices on all reproductions of the data.

D. Release, publication and use of data.

1. The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided below in this paragraph or expressly set forth in this subcontract.
2. The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of this subcontract which contain restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the DOE.
3. The Subcontractor agrees not to assert copyright in computer software first produced in the performance of this subcontract without prior written permission of the DOE Patent Counsel assisting the subcontracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Subcontractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

E. Unauthorized marking of data.

1. Notwithstanding any other provisions of this subcontract concerning inspection or acceptance, if any data delivered under this subcontract are marked with the notices specified in subparagraphs (G)(2) or (G)(3) below and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this subcontract, the DOE may at any time either return the data to the Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.
 - (i) The DOE shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the DOE for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will not longer be made subject to any disclosure prohibitions.
 - (iii) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (i) above, the DOE shall consider such written justification and determine whether or not the markings are to be canceled or ignore. If the DOE determines that the markings are authorized, the Subcontractor shall be so notified in writing. If the DOE determines, with concurrence of the Head of the Contracting Activity, that the markings are not authorized, the DOE shall furnish the Subcontractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the DOE's decision. The Government shall continue to abide by the markings under this subdivision (iii) until final resolution of the matter either by the DOE's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
2. The time limits in the procedures set forth in subparagraph (1) above may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

3. This paragraph (E) does not apply if this subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
4. Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Subcontractor is not precluded by this paragraph (E) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this subcontract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this subcontract.

F. Omitted or incorrect markings.

1. Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (G) below, or the copyright notice required by paragraph (C) above, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Subcontractor may request, within 6 months (or a longer time approved by the DOE for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and the DOE may agree to do so if the Subcontractor:
 - (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the use of the proposed notice is authorized; and
 - (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
2. The DOE may also
 - (i) Permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or
 - (ii) Correct any incorrect notices.

G. Protection of limited rights data and restricted computer software.

1. When data other than that listed in subparagraphs (B)(1)(i), (ii), and (iii) above are specified to be delivered under this subcontract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them to the Government under this subcontract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government is to be treated as limited rights data and not restricted computer software.
2. [Reserved.]
3. [Reserved.]

H. Lower-tier subcontracting.

The Subcontractor has the responsibility to obtain from its lower-tier subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations to the Government under this subcontract. If a lower-tier subcontractor refuses to accept terms affording the Government such rights, the Subcontractor shall promptly bring such refusal to the attention of the DOE and not proceed with lower-tier subcontract award without further authorization.

I. Relationship to patents.

Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

- J. The Subcontractor agrees, except as may be otherwise specified in this subcontract for specific data items listed as not subject to this paragraph, that the DOE or an authorized representative may, up to three years after acceptance of all items to be delivered under this subcontract, inspect at the Subcontractor's facility any data withheld pursuant to paragraph (g)(1) above, for purposes of verifying the Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Subcontractor whose data are to be inspected demonstrates to the DOE that there would be a possible conflict of interest if the inspection were made by a particular representative, the DOE shall designate an alternate inspector.

ALTERNATE II

(G)(2) Notwithstanding subparagraph (G)(1) of this clause, the subcontract may identify and specify the delivery of limited rights data, or the DOE may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Subcontractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (E) and (F) of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE (JUN 1987)

- A. These data are submitted with limited rights under Government Subcontract No.(identify the subcontract) (and lower-tier subcontract No. , if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Subcontractor, be used for purposes of manufacture nor disclosed outside the Government or NREL; except that the Government may disclose these data outside the Government through NREL for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

[Agencies may list additional purposes as set forth in 27.404(d)(1) or if none, so state]

- B. This Notice shall be marked on any reproduction of these data, in whole or in part.

ALTERNATE III

(G)(3)(i) Notwithstanding subparagraph (G)(1) of this clause, the subcontract may identify and specify the delivery of restricted computer software, or the Government may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Subcontractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (E) and (F) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE (JUN 1987)

- A. This computer software is submitted with restricted rights under Government Subcontract No. (identify the subcontract) (and lower-tier subcontract No. , if appropriate). It may not be used, reproduced, or disclosed by the Government or NREL except as provided in paragraph (B) of this Notice or as otherwise expressly stated in the subcontract.

- B. This computer software may be:
1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 2. Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
 3. Reproduced for safekeeping (archives) or backup purposes;
 4. Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
 5. Disclosed to and reproduced for use by support service Subcontractors in accordance with subparagraphs (B)(1) through (4) of this clause, provided the Government and NREL makes such disclosure or reproduction subject to these restricted rights; and
 6. Used or copied for use in or transferred to a replacement computer.
- C. Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (B) of this clause.
- D. Any others rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the subcontract.
- E. This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(G)(3)(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE SHORT FORM (JUN 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Subcontract No. (identify the subcontract) (and lower-tier subcontract No. , if appropriate) with (name of Subcontractor and lower-tier subcontractor)."

(G)(3)(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Subcontractor includes the following statement with such copyright notice: "Unpublished-rights reserved under the Copyright Laws of the United States."

CLAUSE 5 -- ADDITIONAL DATA REQUIREMENTS (JUN 1987)

Derived from FAR 52.227-16

This clause does not apply to this award if the award is for the conduct of basic or applied research, as set out elsewhere in this award, to be performed solely by a college or university, and the estimated cost is not in excess of \$500,000

- A. In addition to the data (as defined in the clause at 52.227-14, Rights in Data-General clause or other equivalent included in this subcontract) specified elsewhere in this subcontract to be delivered, the DOE may, at any time during subcontract performance or within a period of 3 years after acceptance of all items to be delivered under this subcontract, order any data first produced or specifically used in the performance of this subcontract.
- B. The Rights in Data-General clause or other equivalent included in this subcontract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Subcontractor to deliver any data the withholding of which is authorized by the Rights in Data-General or other equivalent clause of this subcontract, or data which are specifically identified in this subcontract as not subject to this clause.
- C. When data are to be delivered under this clause, the Subcontractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.
- D. The DOE may release the Subcontractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (A) of this clause.

CLAUSE 6 -- RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Derived from FAR 52.227-23

(As prescribed in 27.409(s), the following clause has been completed and inserted in the Schedule of the subcontract:)

Except for data contained on pages _____, it is agreed that as a condition of award of this subcontract, and notwithstanding the conditions of any notice appearing thereon, the Government

shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this subcontract) in and to the technical data contained in the proposal dated _____, upon which this subcontract is based.

CLAUSE 7 -- REFUND OF ROYALTIES (FEB 1995)

Derived from DEAR 952.227-9

- A. The subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier subcontractors or both, which amounts have been reported to the DOE through NREL.
- B. The term "royalties," as used in this clause, refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this subcontract or any lower-tier subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this subcontract or the copying of such data or data that is copyrighted.
- C. The Subcontractor shall furnish to the DOE through NREL, before final payment under this subcontract, a statement of royalties paid or required to be paid in connection with performing this subcontract and lower-tier subcontracts hereunder together with the reasons.
- D. The Subcontractor will be compensated for royalties reported under paragraph (C) of this clause, only to the extent that such royalties were included in the subcontract price and are determined by the DOE to be properly chargeable to the Government and allocable to the subcontract. To the extent that any royalties that are included in the subcontract price are not, in fact, paid by the Subcontractor or are determined by the DOE not to be properly chargeable to the Government and allocable to the subcontract, the subcontract price shall be reduced. Repayment or credit to the Government shall be made as the DOE directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- E. If, at any time within 3 years after final payment under this subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (D) of this clause, the Subcontractor shall promptly notify the DOE of that fact and shall reimburse the Government in a corresponding amount.

- F. The substance of this clause, including this paragraph (F), shall be included in any lower-tier subcontract in which the amount of royalties reported during negotiation of the lower-tier subcontract exceeds \$250.